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Negotiable Instruments—Forged Signature—Recovery by Drawee Bank.—Riggs Nat'l Bank of Washington, D.C. v. Dade Fed. Sav. and Loan Ass'n.

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cision in *City of New York v. Fidelity Trust Co.*,[7] holding that the statute of limitations does not begin to run against the depositor until he has made a formal demand on the bank for the money. The reasoning of the court was that if the statute were to run from the date of the forgery or from the date the bank rendered a statement showing the amount of the check charged to the depositor's account, it might result in the claim being barred before the depositor knows of the forgery.

The rule set forth by the Florida court which deviates only in conclusion from that of New York appears to be the better rule because under the New York view the depositor might withhold demand and perpetuate his cause of action for an indefinite period. This deficiency of the New York rule could be avoided by requiring a timely demand by the depositor.

While it is true that the drawer may not know of an invasion of his legal rights until the forged indorsement is actually discovered, it seems harsh to hold the drawee bank to strict accountability to the depositor where the forged indorsement is not discovered in the course of the drawer's business. Many years might elapse before the bank is called to account and it would seem that the bank could be forced to reimburse the drawer although the drawer's own liability to the payee had been blocked by the statute of limitations affecting actions on debt. Moreover, the result here makes the application of the statute a question for the trier of fact in each case, thereby introducing marked uncertainty into commercial transactions which it would seem require a high degree of stability especially in view of the tremendous volume of checks handled by modern banks. Finally, the purpose of the statute—to cause actions to be commenced within a definite time in order to facilitate proof of substantive fact questions—is not well served by the decision.

The UCC resolves this problem by precluding an action against the bank unless the drawer discovers and reports the forged indorsement within three years from the time the statement and vouchers are made available to the drawer.[8] This rule was established because it was felt that in the great preponderance of cases the drawer will discover the forged indorsement within three years and if in an exceptional case he does not, the balance in favor of a mechanical termination of liability of the bank outweighs any possible injustice to the drawer. In a state which has adopted the UCC both issues of this case would be decided in favor of the drawee bank.

THOMAS DUPONT

Negotiable Instrument—Forged Signature—Recovery by Drawee Bank. —***Riggs Nat'l Bank of Washington, D.C. v. Dade Fed. Sav. and Loan Ass'n.***[1]—The defendant bank received a check in the amount of $20,000

[7] 243 App. Div. 46, 276 N.Y. Supp. 341 (1st Dep't 1934); see also Bank of British North America v. Merchants' Nat'l Bank, 91 N.Y. 106 (1883).

[8] UCC § 4-406(4).

[1] 268 F.2d 951 (5th Cir. 1959).

drawn on plaintiff bank enclosed in a letter from one Martucci, requesting the defendant to cash the check and establish a savings account in his name; unknown to the defendant, the drawer's signature on the check had been forged. When the check was received by the defendant, the name of the payee was blank, which, according to Martucci, was done to facilitate endorsement. Defendant rubber-stamped its name as payee and endorsed it "for deposit only" to the newly established account number, although both Martucci and the drawer of the check were strangers. Plaintiff drawee honored the check; twelve days later the defendant permitted Martucci to withdraw $18,000 from the account. After the withdrawal, plaintiff bank notified the defendant that the drawer's signature was a forgery and brought suit in the United States District Court for the Southern District of Florida to recover the payment. Judgment was entered for the defendant from which the plaintiff appealed. The United States Court of Appeals for the Fifth Circuit, approving the findings of the lower court, held that the plaintiff could not recover, but remanded for further proceedings on plaintiff's claim for $2000 which represented the balance of Martucci's account with the defendant.[2]

The case presents the issue of whether, upon the acceptance without question of a check from a stranger with no named payee, the accepting bank should be made to reimburse the drawee bank which honors such check without detecting a forgery of the drawer's signature.

The earliest leading case pertaining to the question is *Price v. Neal*,[3] which held that as between equally innocent parties the drawee must suffer the loss resulting from its failure to detect the forgery of its depositor's signature. NIL § 62 makes no exception to the liability of the drawee when a check has been accepted by it under such circumstances.[4] The UCC, which has been adopted by five states, also makes no allowance for recovery by a drawee which accepts a check, in those instances where a holder or collecting bank having no knowledge of the forgery of the drawer's signature, presents the check for payment.[5] According to the Code, it would seem that where the drawee's acceptance is obtained without knowledge that the drawer's signature was unauthorized, there is no warranty as to the genuineness of such signature running from the holder to the drawee bank. Many American courts have held however, that the NIL incorporates the common law rule of *Price v. Neal* supra, except that the drawee may recover from the person to whom payment is made on a showing of the negligence, fraud or bad faith of such person.[6] The

[2] The money had been paid into the court registry after the appeal had been taken and the District Court no longer had jurisdiction.

[3] 3 Burr. 1354, 97 Eng. Rep. 871 (1762).

[4] NIL § 62: "The acceptor by accepting the instrument engages that he will pay according to the tenor of his acceptance; and admits—

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument . . ."

[5] UCC §§ 3-417, 3-418, 4-207.

[6] First Nat'l Bank of Orleans v. State Bank of Almo, 22 Neb. 769, 36 N.W. 289

significance of the holder's negligence on the liability of the drawee has presented some difficulty, however. Such negligence has been found to be immaterial when it appeared that the drawee was also negligent in making payment of an instrument on which the drawer's signature had been forged; the drawee's negligence in such a case has been termed "negligence at law" or constructive negligence.[7]

Considering the circumstances under which this sizeable check came before the defendant, i.e., having no named payee the instrument was incomplete and it was presented by a stranger through the mail, one might question whether sufficient precautions were taken to insure that it was a valid negotiable instrument. However, § 14 of the NIL clearly permits a holder for value of negotiable paper to fill in the name of the payee, and there was here the added factor that no funds were paid out by the defendant Savings and Loan Association until it was notified of the drawee's acceptance. In addition, the two parties were independent actors, which formed the basis for the court's adoption of a long established principle of convenience that a collecting bank need not notify the drawee of the fact that the space for the payee was blank and that it had made no check of the identity of the person presenting it. The drawee could have known from the face of the check itself that the name of the payee had not been filled in by the drawer. Further, the fact that the defendant did not check the identity of the person presenting it should have had no bearing on the plaintiff's care in checking the purported signature of its depositor. The defendant's presentation of the check did not carry with it the representation that it had dealt with the drawer personally. So also it would seem that the defendant did not have a duty to notify the drawee of the circumstances under which the check was received.

The drawee bank must always be confronted with the fact that it is presumed to know the signatures of its depositors and it will not be heard to repudiate its own mistake, when that mistake occasioned the loss of another, even if want of due care can be shown. The action of the defendant did not proximately occasion any loss; it was the default of the drawee which was the direct and immediate cause of the loss because it put the money beyond the reach of its true owner.[8]

The confidence of the public in the stability and negotiability of commercial paper would be seriously weakened if a drawee bank could overcome its own mistake and pass on its loss by showing the lack of com-

(1888); First Nat'l Bank of Pukwana v. Brule Nat'l Bank, 41 S.D. 87, 168 N.W. 1054 (1918); Newberry Savings Bank v. Bank of Columbia, 19 S.C. 294, 74 S.E. 615 (1912); Citizen's Bank of Fayette v. J. Blach & Sons, Inc., 228 Ala. 246, 153 So. 404 (1934).

[7] First Nat'l Bank of Wichita Falls v. First Nat'l Bank of Borger, 37 S.W.2d 802 (Tex. Civ. App., 1931).

[8] Central Nat'l Bank of Richmond v. First and Merchants' Nat'l Bank, 171 Va. 289, 198 S.E. 883 (1938); Farmers' and Merchants' Bank v. Bank of Rutherford, 115 Tenn. 64, 88 S.W. 939 (1905); Fidelity and Casualty Co. of New York v. Planenscheck, 200 Wis. 304, 227 N.W. 307 (1929).

plete care on the part of another, when that other could have prevented the loss if the drawee had not accepted the instrument.[9] The transaction, under the facts in this case, should end with the acceptance of the check by the drawee; to hold otherwise would leave the way open for the establishment of contingent liabilities on the part of those who deal with checks prior to the acceptance of the drawee, and without knowledge of the forgery. Those situations where money has been paid out before the check is accepted present a new question and it is possible that a balancing of the loss on a theory of comparative negligence might be more equitable in such a case. In the case at hand, however, the drawee should be estopped by its own action in accepting the check, from asserting that it may reclaim the money from the defendant even though the latter may not have taken every possible precaution.

SHEILA M. MCCUE

Negotiable Instruments—Mere Failure to Return a Check Within Twenty-four Hours as Constituting Acceptance.—*Fidelity & Deposit Co. of Md. v. Idaho Bank & Trust Co.*[1]—Plaintiff, bonding company of forwarding bank, brought an action in the United States District Court in Idaho against the defendant drawee bank for losses arising out of a check kiting operation claiming: (a) that defendant as agent of the forwarding bank was negligent in the performance of its duties in collecting certain checks forwarded by plaintiff's assignor and, (b) alternatively, that in failing to return these checks as dishonored within 24 hours after their receipt, defendant became liable as acceptor thereof under § 27-1006 of the Idaho Code [NIL § 137]. On defendant's motion to dismiss, HELD: (1) The counts alleging negligence in collection stated a cause of action since a drawee bank to which a collection item has been forwarded direct is a collecting agent of the forwarding bank as well as a paying agent of the drawer; and (2) the counts alleging failure of the drawee to return the checks as dishonored within 24 hours after receipt did not state a cause of action since mere retention of checks does not constitute an acceptance of them.

In accord with the instant case, it is generally held that a drawee bank, receiving a check for collection from a forwarding bank, acts in the dual capacity of collecting agent for the forwarder and paying agent for the drawer.[2] As such, the drawee's duty, as collecting agent, is to present the checks for acceptance and payment; its duty to the drawer is to pay the

[9] Railway Express Agency v. Bank of Philadelphia, 168 Miss. 279, 150 So. 525 (1933).

[1] 173 F. Supp. 70 (D. Idaho 1959).

[2] Joffrion-Woods v. Brock, 180 La. 771, 157 So. 589 (1934); Old Motor Works v. First State Savings Bank of Morenci, 258 Mich. 269, 241 N.W. 813 (1932); First Nat'l Bank of Murfreesboro v. First Nat'l Bank of Nashville, 127 Tenn. 205, 154 S.W. 965 (1913).